

Title 25. HEALTH SERVICES  
Part I. TEXAS DEPARTMENT OF HEALTH  
Chapter 205. Product Safety  
Subchapter D. Inhalant Abuse  
Repeal §205.51  
New §§205.51-205.66

Adoption Preamble

The Texas Department of Health (department) adopts the repeal of existing §205.51 and new §§205.51-205.66 concerning the regulatory requirements for the retail sale of abusable volatile chemicals. Sections 205.58, 205.60-205.62 are adopted with changes to the proposed text as published in the April 5, 2001, issue of the Texas Register (27 TexReg 2724). Sections 205.51-205.7, 205.59, and 205.63 - 205.66 are adopted without changes, and therefore the sections will not be republished.

Government Code §2001.039 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Section 205.51 has been reviewed and the department has determined that reasons for adopting the section continue to exist in that rules on this subject are needed; however, the rule needs revision as described in this preamble.

The department published a Notice of Intention to Review §205.51, as required by Government Code §2001.039, in the Texas Register on March 2, 2001 (26 TexReg 1875). No comments were received by the department on this section following publication of the notice.

The repeal of §205.51 covering the permitting requirements for sellers of abusable glues and aerosol paints allows for the reformatting of this section into new §§205.51-205.66 which follow the order of the Health and Safety Code, Chapter 485.

New §§205.51-205.61 are required to replace the repealed permitting requirements and to implement revisions to the Health and Safety Code, Chapter 485, which was revised by the 77th Texas Legislature under House Bill (HB) 2950 to expand coverage of regulated products to include nitrous oxide and abusable volatile chemicals labeled as vapor harmful.

New §§205.62-205.66 are required by the Health and Safety Code, Chapter 485, which was revised by the 76th Texas Legislature under §§485.101 - 485.113 to implement administrative penalties. New §205.62 includes prohibited actions listed as criminal offenses under Chapter 485. New §205.63 describes the department's responsibility to monitor and enforce compliance with Chapter 485 through compliance inspections. New §§205.64 - 205.66 describe the conditions under which administrative penalties will be assessed, and the department's options in assessing these penalties. Three severity levels for violations are established, and examples for each severity level are provided.

Due to staff comments, the department made the following changes to improve the accuracy of the section.

**Change:** Concerning §205.58(c), reference to the Texas Administrative Code for Formal Hearing Procedures was corrected from “§§1.21-1.34” to “§§1.21, 1.23, 1.25, and 1.27”.

**Change:** Concerning §205.60(c), repetitive language “in” was deleted from the proposed section.

**Change:** Concerning §205.61(b), “over” was deleted in the last line for accurate age designation.

**Change:** Concerning §205.62(a), “intent” was replaced with “knowledge” and the phrase “except as noted in subsection (e) of this section” was added to accurately reflect administrative penalty assessment.

**Change:** Concerning §205.62(e), a clarifying phrase “or should have known” was added.

The department received several questions concerning these sections from one individual commenter during the formal 30-day comment period. The department neither agrees nor disagrees with the comments since they are questions concerning how the sections will be applied. Following each comment is the department’s response and any resulting change(s).

**Comment:** Concerning §205.56(e), a commenter asked for clarification on what additional information the department may require to determine whether a permit should be issued.

**Response:** The department is responsible for ensuring that all applicable legislative requirements are met prior to issuing any license, permit, or registration. Because these legislative requirements may change from time to time, it is important to provide for any future needs the department may have to collect additional information from permit applicants which may be necessary to determine permit eligibility. It is also possible that under the existing statute, additional information may be needed on a case by case basis because of a question raised by the application. **No change was made as a result of this comment.**

**Comment:** Concerning §205.58(b), a commenter asked why an application fee would not be refunded if an application for a permit was denied by the department.

**Response:** Section 205.58(a) states the conditions in which an application for an initial or renewal permit will be denied by the department. These conditions include failure to submit a completed application, pay the appropriate permit fee, or provide requested information within 30 days after notification by the department. Section 205.58(b) states that if an application is denied, the application fee will not be returned. The department intends for this application fee to be retained in order to provide for the costs incurred by the department to review the deficient application, provide notification to an applicant regarding the deficiencies found, and track the applicant’s response for 30 days, as required under §205.58(a). **No change was made as a result of this comment.**

**Comment:** Concerning §205.58(b), a commenter asked if an applicant’s original fee would be applied to a second application process in the event that a fee is initially withheld and the applicant follows the Formal Hearing Procedures and is successful with their appeal.

**Response:** Section 205.58(c) states that a proceeding to contest the denial of a volatile chemical sales permit under this section is governed by §§1.21, 1.23, 1.25, and 1.27 of this title (relating to Formal Hearing Procedures) and the contested case provisions of Government Code, Chapter 2001. Section 1.27(d)(2) of the Formal Hearing Procedures detail that all final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to an administrative law judge's (ALJ's) proposal for decision. Therefore, a hearing to contest the denial of a permit application will be determined by the ALJ's proposal for decision. In the event that the ALJ concludes that the permit should not be denied, the department will carry out this decision by issuing a permit under the original permit application and fee submitted by the applicant. **No change was made as a result of this comment.**

**Comment:** Concerning §205.60(b), a commenter asked if a permit holder is required to post a single volatile chemical warning sign at the permitted retail location or whether a warning sign is required to be posted at each specific site within the retail store where the abusable volatile chemicals were displayed for sale.

**Response:** The department has added additional wording to §205.60(b) to clarify that a minimum of one warning sign must be displayed at each location for which the permit is issued, but additional warning signs may be posted at multiple sites within this location to ensure that the sign is easily visible to patrons.

**Comment:** Concerning §205.60(d), a commenter asked if a telephone number will be available for retailers to call and request replacement Warning Signs, or if the request must be made in writing.

**Response:** Retailer requests for the Volatile Chemical Warning Signs required under §205.60(d) do not have to be submitted in writing. The department provides retailers with a copy of the Warning Sign at the time a new Volatile Chemical Permit is issued. The department also provides retailers with a telephone number to call and request replacement Warning Signs, and has these signs available for downloading from the department web site. **No change was made as a result of this comment.**

**Comment:** Concerning §205.62(e), a commenter asked how a sales associate can "know" what the intended use of inhalant paraphernalia is going to be and be held accountable for "knowing".

**Response:** Section 205.62(e) states that a person commits a prohibited act under this section if the person delivers or sells inhalant paraphernalia and at the time of the act knows that the person who receives or is intended to receive the paraphernalia intends that it be used to inhale, ingest, apply, use, or otherwise introduce into the human body a substance containing a volatile chemical. The department has modified the language of this section to require that a person who sells inhalant paraphernalia commits a violation if he knows "or should have known" of its intended use at the time of sale. Some knowledge of intended use is necessary since objects such as tubes, balloons, bags and bottles that may be used as inhalant paraphernalia may also have legitimate uses. While a sales associate may not usually know the intended use of inhalant paraphernalia at the time of sale, there are circumstances where he might because of actual knowledge of the person's drug use or statements made by the purchaser about his intended use

of the items at the time of sale. Furthermore, there are circumstances in which a sales associate “should have known” about the intended use of the inhalant paraphernalia because of, for example, the pattern of behavior of a purchaser who frequents the store when the sales associate is on duty. As with all other elements of an alleged violation, the department has the burden of proving knowledge of intended use based on the facts of the case. While such enforcement actions will not be common, the department wanted to ensure that such violations could be pursued through administrative channels as well as be referred to law enforcement agencies for criminal prosecution under Health and Safety Code, §485.033(b).

The comments on the proposed rules received by the department during the comment period were submitted by a representative of the Texas Petroleum Marketers and Convenience Store Association, and by department staff. The commenters were neither for nor against the rules in their entirety; but asked questions and expressed concerns about how the sections would be applied under specific circumstances.

The repeal and new sections are adopted under the Health and Safety Code, §485.013, which provides the Texas Board of Health (board) with the authority to adopt necessary rules to administer this chapter; and the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

Section for repeal:

§205.51. Permit for Sellers of Abusable Glues and Aerosol Paints.

**Legend:** (New Rules - With changes to proposed version)

Double underline = New language not proposed

**Bold, Underline, and Brackets** = Proposed new language now being deleted

Regular print = Final language, same as proposed for final adoption

§205.51. Purpose and Scope. The purpose of these sections is to implement the provisions of the Health and Safety Code, Chapter 485, concerning the retail sale of abusable volatile chemicals. These sections cover definitions, applications for issuance and renewal of permits to sell abusable volatile chemicals, permit fees, and department procedures for approving, denying, and renewing permits. These sections also cover the assessment of administrative penalties.

§205.52. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Abusable volatile chemical -

(A) A chemical, including aerosol paint that:

(i) is packaged in a container subject to the labeling requirements concerning precautions against inhalation established under the Federal Hazardous Substances Act (15 U.S.C. §1261 et seq.), as amended, and regulations adopted under that Act and is labeled with the statement of principal hazard on the principal display panel “VAPOR HARMFUL” or other labeling requirement subsequently established under that Act or by those regulations;

(ii) when inhaled, ingested, or otherwise introduced into a person’s body, may:

(I) affect the person’s central nervous system;

(II) create or induce in the person a condition of intoxication, hallucination, or elation; or

(III) change, distort, or disturb the person’s eyesight, thinking process, balance, or coordination; and

(iii) is not:

(I) a pesticide subject to Agriculture Code, Chapter 76 or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. §136 et seq.), as amended;

(II) a food, drug, or cosmetic subject to Health and Safety Code, Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.), as amended; or

(III) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. §201 et seq.), as amended; or

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(B) nitrous oxide that is not:

(i) a pesticide subject to Agriculture Code, Chapter 76 or to the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. §136 et seq.), as amended;

(ii) a food, drug, or cosmetic subject to Health and Safety Code, Chapter 431 or to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.), as amended; or

(iii) a beverage subject to the Federal Alcohol Administration Act (27 U.S.C. §201 et seq.), as amended.

(2) Act - The Abusable Volatile Chemical Act, Health and Safety Code, Chapter 485.

(3) Aerosol paint - An aerosolized paint product, including a clear or pigmented lacquer or finish.

(4) Board - The Texas Board of Health.

(5) Commissioner - The commissioner of health.

(6) Deliver - To make the actual or constructive transfer from one person to another of an abusable volatile chemical, regardless of whether there is an agency relationship. The term includes an offer to sell an abusable volatile chemical.

(7) Delivery – The act of delivering.

(8) Department - The Texas Department of Health.

(9) Inhalant paraphernalia - Equipment or materials of any kind that are intended for use in inhaling, ingesting, or otherwise introducing into the human body an abusable volatile chemical. The term includes a tube, balloon, bag, fabric, bottle, or other container used to concentrate or hold in suspension an abusable volatile chemical, or vapors of the chemical.

(10) Permit – A volatile chemical sales permit.

(11) Permit holder - A person who has a valid volatile chemical sales permit.

(12) Retailer - Any business or location which sells to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(13) Sell - Includes a conveyance, exchange, barter, or trade.

(14) Volatile chemical sales permit – A permit authorizing a retailer to sell at retail abusable volatile chemicals.

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§205.53. Responsibility for Implementation of Program. The department's responsibilities under the Act are carried out through the Texas Department of Health, Product Safety Division. Inquiries regarding this Act may be addressed to: Texas Department of Health, Product Safety Division, 1100 West 49th Street, Austin, Texas 78756.

§205.54. Permit Requirements and Conditions.

(a) A person may not sell an abusable volatile chemical at retail unless the person or the person's employer has, at the time of the sale, a valid volatile chemical sales permit for the location of the sale. A separate permit is required for each location at which an abusable volatile chemical is sold. A permit is valid for one year and must be renewed annually.

(b) To be eligible for the issuance or renewal of a volatile chemical sales permit, an applicant or permit holder must:

(1) hold a valid sales tax permit that has been issued to the applicant;

(2) complete and return an application form as required by the department under §205.56 of this title (relating to Permit Application), signing and dating the form attesting to the accuracy of all information contained therein;

(3) pay to the department a \$25 application fee or a \$25 renewal fee for each location at which an abusable volatile chemical may be sold by the applicant as required by the department under §205.57 of this title (relating to Permit Fee);

(c) A permit is not valid if the permit holder has been convicted more than once in the preceding year of any offense that is committed:

(1) at the location for which the permit is issued; and

(2) under the Health and Safety Code, Chapter 485, §§485.031 - 485.033 (relating to Criminal Acts).

(d) In addition to the requirements in subsections (a) and (b) of this section, the following conditions shall be met by permit holders:

(1) permit holder shall not sell or deliver abusable volatile chemicals to a person under 18 years of age;

(2) permit holder must have the permit or a copy of the permit available for inspection at the location for which the permit is issued following the requirements of §205.59 of this title (relating to Permit Available for Inspection);

(3) permit holder shall post a volatile chemical warning sign at the location for which the permit is issued following the requirements of §205.60 of this title (relating to Requirement to Post Warning Sign); and

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(4) permit holder that displays aerosol paint at the location for which the permit is issued or renewed shall restrict access to the aerosol paint following the requirements of §205.61 of this title (relating to Restriction of Access to Aerosol Paint).

(e) A permit may not be transferred to a new location or to a new owner.

### **§205.55. Issuance and Renewal of Permit.**

(a) The department shall issue a permit to a person who meets the requirements of this section, §205.54 of this title (relating to Permit Requirements and Conditions), §205.56 of this title (relating to Permit Application), and §205.57 of this title (relating to Permit Fee).

(b) The permit holder may renew the permit by filing a renewal application accompanied by a \$25 renewal fee following the requirements described in subsection (a) of this section.

(c) At least 45 days before a permit expires the department, as a service to the permit holder, will send a renewal notice to the last known address of the permit holder. It is the responsibility of the permit holder to keep the department informed of their current mailing address and to timely renew their permit whether or not they have received the notification from the department.

(d) If a permit holder submits a completed permit renewal application and fee to the department postmarked on or before the permit expiration date, the existing permit does not expire until the application has been finally determined by the department. If the application is denied or the terms of the new permit are limited, the existing permit does not expire until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

### **§205.56. Permit Application.**

(a) Application for an initial or renewal permit must be made on an approved application form which may be obtained from the Product Safety Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(b) A separate application form must be completed and submitted for each specific business location.

(c) The application form shall be accurately completed and signed by the applicant or its authorized representative and shall be accompanied by the appropriate permit fee to be considered complete. The department shall notify the applicant of any deficiencies in their application, and shall allow the applicant or permit holder to provide the missing information or

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permit fee within 30 days of the deficiency letter or the application will be denied under §205.58 of this title (relating to Permit Denial). All blanks on the application form shall be completely filled in or the application may not be processed.

(d) The department shall issue or deny a permit for retail sale of abusable volatile chemicals within 60 days after the date on which the department receives the completed application and appropriate fee.

(e) The department may, after the filing of an application, require additional information that the department considers necessary to determine whether the permit should be issued.

### **§205.57. Permit Fee.**

(a) Each application form submitted for an initial permit or to renew a permit shall be accompanied by a \$25 fee.

(b) The fee shall be paid by money order, certified check, or personal check and shall be made payable to the Texas Department of Health. Payment in cash shall not be accepted.

(c) A separate \$25 application fee is required for each retail location.

(d) The department may prorate permit fees to provide for a common expiration date on request from persons holding and/or applying for more than one permit.

### **§205.58. Permit Denial.**

(a) An application for an initial or renewal permit will be denied by the department if the applicant fails to submit a completed application, pay the appropriate permit fee, or provide requested information within 30 days after notification by the department as required under §205.56 of this title (relating to Permit Application) and §205.57 of this title (relating to Permit Fee).

(b) If an application is denied, the department shall notify the applicant or permit holder within 60 days of the receipt of the completed application form and appropriate fee. The department shall include in the notice the reasons for the denial. The application fee will not be returned.

(c) A proceeding to contest the denial of a volatile chemical sales permit under this section is governed by §§1.21, 1.23, 1.25, and 1.27 [**§§1.21-1.34**] of this title (relating to Formal Hearing Procedures) and the contested case provisions of Government Code, Chapter 2001.

**§205.59. Permit Available for Inspection.** A permit holder must have the volatile chemical sales permit or a copy of the permit available for inspection by the public or the department at each location where the permit holder sells an abusable volatile chemical.

### **§205.60. Requirement to Post Warning Sign.**

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(a) A business establishment that sells abusable volatile chemicals at retail shall display a volatile chemical warning sign, in English and Spanish, that states the following: “It is unlawful for a person to sell or deliver abusable volatile chemicals to a person under 18 years of age. Except in limited situations, such an offense is a state jail felony. It is also unlawful for a person to abuse a volatile chemical by inhaling, ingesting, applying, using, or possessing with intent to inhale, ingest, apply, or use a volatile chemical in a manner designed to affect the central nervous system. Such an offense is a Class B misdemeanor.”

(b) A current version of the volatile chemical warning sign shall be clearly posted in a conspicuous and prominent place at the location where the permit holder sells abusable volatile chemicals. At a minimum, at least one warning sign must be posted at the location for which the permit is issued. Permit holders may post additional warning signs at multiple sites within this location to ensure that the sign is easily visible to patrons of the establishment.

(c) The volatile chemical warning sign shall measure at least 8-1/2 by 11 inches and must be typed, typeset, or mechanically produced with lettering that is clearly legible. The letters shall not be smaller than 12 characters per inch. The word “WARNING” shall be **in** included in bold capital letters at least 1/3 inch high and located above the wording required in subsection (a) of this section.

(d) To assist permit holders in complying with subsection (a) of this section, the department shall make warning signs available for use and photocopying by permit holders. Warning signs may be obtained free of charge from the Product Safety Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(e) Permit holders may add the following additional information to the warning sign as long as the wording required by subsection (a) of this section is included: the name, address, and telephone number of the business establishment’s contact for responding to questions from patrons.

### §205.61. Restriction of Access to Aerosol Paint.

(a) A business establishment that holds a volatile chemical sales permit under §205.54 of this title (relating to Permit Requirements and Conditions) and that displays aerosol paint shall display the paint:

(1) in a place that is in the line of sight of a cashier or in the line of sight from a workstation normally continuously occupied during business hours;

(2) in a manner that makes the paint accessible to a patron of the business establishment only with the assistance of an employee of the establishment; or

(3) in an area electronically protected, or viewed by surveillance equipment that is monitored, during business hours.

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(b) This section does not apply to a business establishment that has in place a computerized checkout system at the point of sale for merchandise that alerts the cashier that a person purchasing aerosol paint must be **over** 18 years of age or older.

(c) This section applies only to a business establishment that is located in a county with a population of 75,000 or more.

**§205.62. Prohibited Acts.**

(a) The department may impose an administrative penalty on a person who sells abusable volatile chemicals at retail and who commits a prohibited act under this section; no finding of **knowledge** **intent** is required to impose an administrative penalty, except as noted in subsection (e) of this section.

(b) A person commits a prohibited act under this section if the person sells or delivers an abusable volatile chemical to a person who is younger than 18 years of age.

(c) It is a defense to the violation listed in subsection (b) of this section if:

(1) the abusable volatile chemical that was delivered contains additive material that effectively discourages intentional abuse by inhalation; or

(2) the person making the delivery is not the manufacturer of the chemical and the manufacturer of the chemical failed to label the chemical with the statement of principal hazard on the principal display panel "VAPOR HARMFUL" or other labeling requirement subsequently established under the Federal Hazardous Substances Act (15 U.S.C. §1261 et seq.), as amended, or regulations subsequently adopted under that Act.

(d) It is an affirmative defense to the violation listed in subsection (b) of this section if:

(1) the person making the delivery is an adult having supervisory responsibility over the person younger than 18 years of age and:

(A) the adult permits the use of the abusable volatile chemical only under the adult's direct supervision and in the adult's presence and only for its intended purpose; and

(B) the adult removes the chemical from the person younger than 18 years of age on completion of that use; or

(2) the person to whom the abusable volatile chemical was sold or delivered presented to the seller at retail an apparently valid Texas driver's license or an identification certificate, issued by the Department of Public Safety of the State of Texas and containing a physical description consistent with the person's appearance, that purported to establish that the person was 18 years of age or older.

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(e) A person commits a prohibited act under this section if the person delivers or sells inhalant paraphernalia and at the time of the act knows or should have known that the person who receives or is intended to receive the paraphernalia intends that it be used to inhale, ingest, apply, use, or otherwise introduce into the human body a substance containing a volatile chemical.

**§205.63. Compliance Inspections.**

(a) The department shall monitor and enforce compliance with the Act and any rule or order adopted by the board to administer the Act.

(b) Compliance inspections or investigations may be conducted by a department representative during normal operating hours to determine if a person is in violation of the Act or a rule or order adopted by the board to administer the Act.

(c) A department representative, upon presenting the department identification card, shall have the right to enter all retail facilities during normal operating hours to inspect and investigate for compliance with these sections, including to review records, to question any person, or to locate or identify abusable volatile chemicals held for retail sale.

(d) A department representative is not required to notify in advance or seek permission to conduct inspections or investigations. It is a violation of this chapter for a person to interfere with, deny, or delay an inspection or investigation conducted by a department representative.

**§205.64. Administrative Penalty.**

(a) The department may assess an administrative penalty against a person who sells an abusable volatile chemical at retail who violates the Act or a rule or order adopted under this Act.

(b) A penalty collected under this subchapter shall be deposited in the state treasury in the general revenue fund.

(c) The amount of the penalty may not exceed \$1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this subsection may not exceed \$5,000.

(d) In determining the amount of the administrative penalty, the department shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

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(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(6) any other matter that justice may require.

(e) Violations will be classified in one of three severity levels.

(1) Critical Violation. Severity Level III includes violations that are most significant and have a direct negative impact on public health and safety. The penalty for a Level III violation on first occurrence is up to \$1000 per day, per violation. The same violation continuing for more than one day is a separate violation. Examples of Level III violations include but are not limited to:

(A) operating without a valid volatile chemical sales permit for the location at which abusable volatile chemicals are sold in violation of §205.54 of this title (relating to Permit Requirements and Conditions);

(B) operating under a permit issued to another person or for another location, in violation of §205.54 of this title;

(C) falsifying information required on the volatile chemical sales permit application under §205.56 of this title (relating to Permit Application);

(D) failing to establish controls to restrict a person under the age of 18 years from access to aerosol paints displayed for retail sale at a business establishment as required under §205.61(a) of this title (relating to Restriction of Access to Aerosol Paint);

(E) interfering with, denying, or delaying department representatives in conducting an inspection at the location at which abusable volatile chemicals may be sold as required under §205.63 of this title (relating to Compliance Inspections); or

(F) committing any of the prohibited acts listed under §205.62 of this title (relating to Prohibited Acts).

(2) Serious violation. Severity Level II includes violations that are significant and which, if not corrected, could threaten public health and safety. The penalty for a Level II violation on first occurrence is up to \$750 per day, per violation. The same violation continuing for more than one day constitutes a separate violation. Examples of Level II violations include, but are not limited to:

(A) failing to have a volatile chemical sales permit available for inspection by the public or department as required under §205.59 of this title (relating to Permit Available for Inspection);

(B) failing to display a volatile chemical warning sign as required under §205.60(a) of this title (relating to Requirement to Post Sign); or

(C) failing to ensure that the controls established under §205.61(a) of this title (relating to Restriction of Access to Aerosol Paint) are adequate to restrict a person under the age of 18 from access to aerosol paints.

(3) Significant violation. Severity Level I includes violations that are of more than minor significance and, if left uncorrected, could lead to more serious circumstances. The penalty for a Level I violation on first occurrence is up to \$500 per day, per violation. The same violation continuing for more than one day constitutes a separate violation. Examples of Level I violations include, but are not limited to:

(A) failing to post a volatile chemical warning sign in a conspicuous and prominent place as required under §205.60(b) of this title; or

(B) posting a volatile chemical warning sign that does not comply with the requirements under §205.60(c) of this title.

#### §205.65. Notice of Violation.

(a) If the department initially determines that a violation occurred, the department shall give written notice of the report by certified mail to the person.

(b) The notice must include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the proposed penalty; and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(c) Not later than the 20th day after the date on which the notice is received, the person notified may, in writing:

(1) accept the determination and recommended penalty of the department;

(2) request a settlement conference; or

(3) request a hearing on the occurrence of the violation, the amount of the penalty, or both. A person may request both a settlement conference and a hearing in the same letter.

(d) If the person accepts the determination and recommended penalty or if the person fails to respond in a timely manner to the notice, the commissioner or the commissioner's

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designee shall issue an order approving the determination and imposing the recommended penalty.

§205.66. Administrative Hearing. A proceeding to impose the penalty is considered to be a contested case subject to the provisions of the Administrative Procedure Act, Texas Government Code, Chapter 2001. The formal hearing procedures of the department in Chapter 1 of this title (relating to the Board of Health) and the provisions of the Act found in the Health and Safety Code, Chapter 485, Subchapter D shall also apply.